

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENNETH HERNANDEZ,

Petitioner,

vs.

NSDC, *et al.*,

Respondents.

2:14-cv-00060-JCM-NJK

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by an inmate.

Rule 4 of the Rules Governing § 2254 Cases requires the court to make a preliminary review of each petition for writ of habeas corpus. The court must dismiss a petition "[i]f it plainly appears from the face of the petition . . . that the petitioner is not entitled to relief in the district court." Rule 4 of the Rules Governing 2254 Cases; *see also Hendricks v. Vasquez*, 908 F.2d 490 (9th Cir. 1990).

A federal court may only grant a petition for writ of habeas corpus if the petitioner can show that "he is in custody in violation of the Constitution" 28 U.S.C. § 2254(a). "According to traditional interpretation, the writ of habeas corpus is limited to attacks upon the legality or duration of confinement." *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979) *citing Preiser v. Rodriguez*,

1 411 U.S. 475, 484-86 (1973); Advisory Committee Notes to Rule 1 of the Rules Governing Section
2 2254 Cases. Petitioner's allegations, however, do not challenge the legality or duration of his
3 confinement. Rather, petitioner's claims challenge the conditions of his confinement. Thus, his
4 claims are not appropriate for habeas corpus relief. Challenges to the conditions of confinement are
5 more appropriately raised in civil rights action. *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991);
6 *Crawford v. Bell*, 599 F.2d at 891-92 (9th Cir. 1979). The clerk of court will be directed to send
7 plaintiff the appropriate forms for filing a prisoner civil rights action.

8 Additionally, this matter has not been properly commenced because petitioner submitted
9 incomplete financial paperwork. The *in forma pauperis* application was not submitted on the court-
10 approved form as required by Local Rule LSR 1-1. In addition to filing an application to proceed *in*
11 *forma pauperis* on the court-approved form, a prisoner seeking to proceed *in forma pauperis* "shall
12 submit a certified copy of the trust fund account statement (or institutional equivalent) for the
13 prisoner for the 6-month period immediately preceding the filing of the complaint . . . obtained from
14 the appropriate official of each prison at which the prisoner is or was confined." 28 U.S.C. §
15 1915(a)(1), (2); Local Rule LSR 1-2. Petitioner has failed to submit an *in forma pauperis*
16 application on the court-approved form and has failed to provide the necessary financial information.
17 Due to the defects presented, the *in forma pauperis* application will be denied.

18 **IT IS THEREFORE ORDERED** that this action is **DISMISSED WITH PREJUDICE** for
19 failure to state a cognizable habeas corpus claim.

20 **IT IS FURTHER ORDERED** that the application to proceed *in forma pauperis* (ECF No.
21 1) is **DENIED**.

22 **IT IS FURTHER ORDERED** that petitioner's motion at ECF No. 2 is **DENIED**.

23 **IT IS FURTHER ORDERED** that the clerk of the court shall send petitioner the following:
24 (1) two copies of an *in forma pauperis* application form for a prisoner and instructions for same; (2)

1 two copies of a blank 42 U.S.C. § 1983 prisoner civil rights form and instructions for the same; and
2 (3) one copy of the papers submitted by plaintiff at ECF No. 1.

3 **IT IS FURTHER ORDERED** that plaintiff may file a new complaint and new *in forma*
4 *pauperis* application in a new action, but he may not file further documents in this action.

5 **IT IS FURTHER ORDERED** that the clerk of the court shall enter judgment accordingly.

6 **IT FURTHER IS ORDERED** that a certificate of appealability is **DENIED**. Reasonable
7 jurists would not find the dismissal of the improperly-commenced action without prejudice to be
8 debatable or wrong.

9 Dated this 16th day of January, 2014.

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12 UNITED STATES DISTRICT JUDGE
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